

Decision **DRAFT DECISION OF ALJ REED** (Mailed 5/6/2002)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Own Motion into Monitoring
Performance of Operations Support Systems.

Rulemaking 97-10-016
(Filed October 9, 1997)

Order Instituting Investigation on the
Commission's On Motion into Monitoring
Performance of Operations Support Systems.

Investigation 97-10-017
(Filed October 9, 1997)

**MODIFICATION CLARIFYING IMPLEMENTATION DETAILS
OF THE PERFORMANCE INCENTIVE PLAN FOR
PACIFIC BELL TELEPHONE COMPANY**

Summary

This order clarifies and modifies, on the Commission's own motion, Decision (D.) 02-03-023, by detailing in newly added Ordering Paragraphs the several options that competitive local exchange carriers (CLECs) have with respect to the performance incentives plan (PIP) for Pacific Bell Telephone Company (Pacific). Specifically, it clarifies how the plan will be implemented when a CLEC: (1) neither accepts the PIP, nor chooses approval of another plan (the PIP is implemented for that CLEC); (2) declines to accept billing credits (the PIP is implemented as if the CLEC had accepted the plan, and all Tier I and Tier II incentive credits are added to Tier II for distribution to ratepayers under Tier II procedures); and/or (3) seeks to be governed by a different or modified plan (the PIP is implemented until the new plan is approved) .

Background

In our “Opinion on the Performance Incentive Plan for Pacific Bell Telephone Company”, Decision (D.) 02-03-023 (*Pacific PIP Opinion*, or *Opinion*) we adopted the PIP for Pacific’s Operations and Support System (OSS) performance for CLECs. During Pacific’s work to implement the PIP, we have become aware of issues that may need clarification. To assist Pacific, the CLECs, and other parties to this proceeding, we modify D.02-03-023 to specify in the Ordering Paragraphs the options a CLEC has regarding the PIP, and to clarify how each option must be implemented.

Discussion

In the *Pacific PIP Opinion*, we ordered Pacific to offer the PIP to all CLECs, and stated that the PIP would be implemented for any CLEC accepting the plan. *Opinion* at 97, Ordering Paragraph No. 2. For CLECs not accepting the PIP and wishing to have an alternate plan, we required that our approval first be obtained. *Id.*, Ordering Paragraph No. 3. However, we did not make explicit what was required if a CLEC did not act at all, neither accepting the PIP nor obtaining approval of an alternate plan. Additionally, we did not make explicit what would be in effect until a CLEC and Pacific obtained approval of an alternate plan.

Our clarifications herein follow the fundamental rationale and structure of the PIP as adopted in D.02-03-023. The primary purpose of the PIP billing credits is to motivate Pacific’s OSS performance. First and foremost, these credits are incentives. *Opinion* at 2, 41-50, 58-61, 63-64. We have crafted these clarifications to preserve the incentive nature of the PIP by maintaining the relationship between overall performance and incentive amounts. *Id.* For example, if CLECs declined to have any incentive plan or declined to accept incentive billing credits, the PIP’s incentive levels would decrease relative to performance levels. The

PIP's performance-incentive relationship would be altered. Consequently, to prevent unilateral alteration of the PIP's core structure when a CLEC declines having a plan or credits, we require that any amounts, both Tier I and Tier II, that would be generated by the PIP if it were implemented for a CLEC be added to Tier II for disbursement.

Additionally, we wish to preserve how the PIP proportionally distributes credits to the CLECs and the ratepayers. *Opinion* at 63-68, 77. We do not intend to approve plans that significantly affect these credit distribution proportions. An example of such a plan is the SBC thirteen-state generic performance measurements plan, which has no ratepayer credit provisions. As a consequence, all CLECs currently having ICAs containing the SBC thirteen-state generic performance measurements plan will be governed by the PIP until receiving approval for an acceptable alternative.

Comments on Draft Decision

The draft decision of ALJ Jacqueline Reed in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g)(1) and Rule 77 of the Commission's Rules of Practice and Procedure.

Findings of Fact

1. In the *Pacific PIP Opinion*, the details of the several options that the CLECs have with respect to the performance incentives plan were not explicitly set out in the Ordering Paragraphs.
2. The lack of specificity in the Ordering Paragraphs regarding the CLECs' several options may impede implementation of the PIP.
3. If CLECs declined to have any incentive plan or declined to accept incentive billing credits, the performance-incentive relationship established in the PIP in D.02-03-023 would be altered.

4. If a CLEC declined to have any incentive plan or declined to accept incentive billing credits, adding any amounts that would be generated by the PIP if it were implemented for that CLEC to Tier II for disbursement would prevent unilateral alteration of the PIP's performance-incentive relationship.

5. The SBC thirteen-state generic performance measurements plan has no ratepayer credit provisions.

Conclusions of Law

1. Public Utilities Code Section 1708 permits the Commission at any time, upon notice to the parties, and with opportunity to be heard, to amend any order or decision made by it.

2. D.02-03-023 should be modified to explicitly set out the CLECs' options with respect to Pacific's PIP in order to facilitate implementation of the plan.

3. If a CLEC declined to have any incentive plan or declined to accept incentive billing credits, all amounts that would be generated by the PIP, if it were implemented for that CLEC, should be added to Tier II for disbursement.

4. Any CLEC with an ICA containing the SBC thirteen-state generic performance measurements plan should be governed by the PIP until the Commission approves an alternate plan for that CLEC.

5. Any CLEC wishing to be governed by a performance incentive plan existing in a current ICA should receive formal Commission approval before that plan is implemented in place of the PIP.

6. Until the Commission approves a motion seeking approval for an alternate performance incentives plan for a CLEC, the PIP should be implemented for that CLEC.

7. This order should be effective immediately so that the initial six-month implementation period will not be delayed.

O R D E R

IT IS ORDERED that Ordering Paragraph 2 of Decision 02–03-023 shall be modified to add subsections (a.) through (d.) as reflected in the attached Appendix.

- “(a.) If a CLEC neither accepts the Commission’s Performance Incentives Plan, nor receives Commission approval of a different plan, the Performance Incentives Plan shall be implemented for that CLEC.”
- “(b.) If a CLEC declines to receive the billing credits from any performance incentives plan, the Performance Incentives Plan shall be implemented for that CLEC as if it had accepted the plan, and all incentive credits generated, through both Tier I and Tier II plan structures, shall be added to the Tier II credits for disbursement to the ratepayers under Tier II procedures.”
- “(c.) CLECs must either (I) file an amendment to their interconnection agreement (ICA), pursuant to Rule 6.2 of ALJ-181, noting that they have accepted the Performance Incentives Plan, (II) file an amendment to their ICA declining to receive performance incentives credits from the Commission’s Performance Incentives Plan, or (III) jointly file a motion with Pacific in this proceeding requesting that the Commission approve an alternate performance incentives plan.”

“(d.) If Pacific and CLEC choose to file a joint motion requesting the Commission approve an alternate performance incentives plan, until such approval is granted, the Commission’s Performance Incentives Plan shall apply.”

This order is effective today.

Dated _____, at San Francisco, California.

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Decision 02-03-023 as modified by this decision is as follows:

1. A performance incentives plan, which identifies performance failures and non-failures, as specified in Appendix J incorporated by reference herein, shall be adopted for Pacific Bell (Pacific) to offer to CLECs.
2. The performance incentives plan, comprised of the performance measurements adopted in Decision (D.) 01-05-087, the decision model adopted in D.01-01-037 and as modified herein, and an incentive payment component adopted herein, shall be offered to the CLECs, and where accepted, implemented for an initial period of at least six months or until otherwise modified by this Commission.
 - “(a.) If a CLEC neither accepts the Commission’s Performance Incentives Plan, nor receives Commission approval of a different plan, the Performance Incentives Plan shall be implemented for that CLEC.”
 - “(b.) If a CLEC declines to receive the billing credits from any performance incentives plan, the Performance Incentives Plan shall be implemented for that CLEC as if it had accepted the plan, and all incentive credits generated, through both Tier I and Tier II plan structures, shall be added to the Tier II credits for disbursement to the ratepayers under Tier II procedures.”
 - “(c.) CLECs must either (I) file an amendment to their interconnection agreement (ICA), pursuant to Rule 6.2 of Commission Resolution ALJ-181, noting that they have accepted the Performance Incentives Plan, (II) file an amendment to their ICA declining to receive performance incentives credits from the Commission’s Performance Incentives Plan, or (III) jointly file a motion with Pacific in this proceeding requesting that the Commission approve an alternate performance incentives plan.”

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“(d.) If Pacific and a CLEC choose to file a joint motion requesting the Commission approve an alternate performance incentives plan, the Commission’s Performance Incentives Plan shall apply until such approval is granted.”

3. Pacific and any CLEC may agree to use a different performance incentives plan, subject to approval by this Commission.
4. Parties to this proceeding shall collaborate to review and recommend any appropriate revisions for the definition and/or use of Performance Measure 16.
5. Incentive payments, as specified in Appendix J of this decision, shall commence the first full month following the effective date of this order.
6. Following the six-month initial period, the performance of the incentives plan model shall be reviewed. Such review shall examine how the incentives plan model is functioning and shall include any adjustments and modifications to the components as well as the resolution of any issues remaining from D.01-01-037.
7. The schedule for the incentives plan model review shall be set by separate ruling.

(END OF APPENDIX)